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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,033	02/09/2001	Donald P. Gibson	36.P290	1583
5514	7590	07/17/2007	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			VAN BRAMER, JOHN W	
		ART UNIT	PAPER NUMBER	
		3622		
		MAIL DATE	DELIVERY MODE	
		07/17/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/781,033	GIBSON ET AL.
Examiner	Art Unit	
John Van Bramer	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 May 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 55,56,58 and 59 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 55,56,58 and 59 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 4, 2007 has been entered.

### ***Response to Amendment***

2. The amendment May 4, 2007 has cancelled no claims. No new Claims were added and Claims 55, 56, 58, and 59 were amended. Thus, the currently pending claims considered below remain Claims 55, 56, 58 and 59.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 55, 56, 58, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurinus et al. (U.S. Patent Number: 5,606,365) in view of Flickinger et al (PGPUB: US 2002/0083441 A1).

Claims 55, 58, and 59: Maurinus discloses a cable head end apparatus, a method for providing image display services, and a computer readable memory medium comprising:

- a. Distribution means for distributing television signals over a digital cable television network to a plurality of remote set top boxes, including a user set top box, and for providing image display services. (Col. 6, lines 47-58; and Col 9, lines 20-45)
- b. Photo image receiving means for receiving a photo image from a storage media via the user set top box. (Col 3, lines 26-35; and Col 7, lines 7-21)
- c. A storing means for storing the photo image in an image database. (Col 7, lines 3-21).
- d. Obtaining means for obtaining additional data corresponding to said cable head end apparatus having the image database in which the photo image is stored from the additional data. (Col 7, lines 47-67)
- e. Display controlling means for controlling to display the photo image and the obtained additional data together at a user display via the user set top box. (Col 8, lines 1-14)

While Maurinus is silent regarding the use of advertising in the disclosed invention, the analogous art of Flickinger discloses that it is well known to transmit and store

wide spread advertising information at one or more cable head ends for inclusion as an insert and/or overlay on a digital image sent to a user's set top box (Flickinger: Page 1, Paragraphs [0012] and [0013]; Page 3, Paragraphs [0041] and [0043]; and Page 5, Paragraph [0060]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include advertisement distribution with the transmission and display of digital images disclosed by Maurinus. One would have been motivated to include advertising in order to generate additional revenue for the cable head end in return for the additional services it is providing.

Claim 56: Maurinus discloses an apparatus according to Claim 55, further comprising:

- a. Menu display controlling means for displaying a service menu at the user display terminal. (Col 6, line 47 through Col 7, line 2)
- b. Receiving means for receiving a request of the service menu from the user terminal, wherein the display controlling means displays the photo images at the user display terminal in response to the request received by the receiving means. (Col 6, line 47 through Col 7, line 2)

***Response to Arguments***

5. Applicant's response dated May 4, 2007, presented no additional argument regarding the previous rejections and summarized the results of the Telephone Interview that was conducted on April 25, 2007. As the applicant has indicated the amendments as submitted required additional search and/or consideration, which necessitated the new grounds of rejection, presented above.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gks  
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